

START

0014551

DON'T SAY IT --- Write It!

DATE: May 10, 1991

TO: Brian Sprouse
H4-22

FROM: Julie K. Erickson, Chief
Environmental Remediation
Branch

Telephone: 6-6798

cc: Lyle Harris, EM-442 (DOE-HQ)
Larry Hulstrom (WHC)
David Shafer, ERD

SUBJECT: Waiver to 10 CFR 1022.18(a) Public Review Period for 300-FF-5

Attached is a waiver for a 15 day public review period following publication of the floodplain statement of finding (SOF) and prior to the start of activities in the floodplain for the 300-FF-5 Operable Unit (OU). The waiver of the 10 CFR 1022.18(a) public review is permitted by 10 CFR 1022.18(c). The waiver will permit RI/FS intrusive site activities to begin in the floodplain of this OU as soon as the SOF is approved by DOE-HQ.

A copy of 10 CFR 1022.18 is also attached.

Please insert into the 300-FF-5 Operable Unit Administrative Record.



**Waiver of 10 CFR 1022.18, 15-Day Public Review Period
300-FF-5 Operable Unit**

This memorandum serves notice that because of Hanford Federal Facility Agreement and Consent Order (Tri-Party Agreement) requirements, DOE-Richland (DOE-RL) believes it is justified in beginning Remedial Investigation/Feasibility Study (RI/FS) intrusive activities within the 100-year floodplain of the 300-FF-5 Operable Unit (OU) immediately with approval of a Floodplain Statement of Finding (SOF). This invokes the provisions of 10 CFR 1022.18 (c) that permits waiving the need for a 15 day public review period prior to initiating floodplain/wetland activities following publication of the SOF.

On February 7, 1991, a request for determination of National Environmental Policy Act (NEPA) Categorical Exclusion (CX) for the 300-FF-5 OU was transmitted from DOE-RL to DOE Headquarters (DOE-HQ). Because RI/FS activities for this OU are planned in the 100-year floodplain of the Columbia River, a Floodplain/Wetland Assessment (FP/WA) was prepared and submitted in accordance with 10 CFR 1022.12. In accordance with 10 CFR 1022.14, a Floodplain/Wetland Notice of Involvement (NOI) was submitted to the Federal Register (FR) on April 19, 1991, for a 15 day public review period. No public comments were received. The CX and a Floodplain SOF are currently undergoing review and approval at DOE-HQ. In the FP/WA we determine that environmental impacts to the floodplain will be insignificant.

A second public review period for floodplain/wetlands actions is provided for in 10 CFR 1022.18 (a). It states "prior to implementing a proposed floodplain action, DOE shall endeavor to allow at least 15 days of public review after publication of the statement of finding." However, 10 CFR 1022.18 (c) states that "Where emergency circumstances, statutory deadlines, or overriding considerations of program or project expense or effectiveness exist, the minimum time periods may be waived."

With respect to RI/FS work for the 300-FF-5 OU, it is the opinion of the Department of Energy, Richland Operations Office, that conditions with respect to 10 CFR 1022.18 (c) exist and that there is sufficient justification to waive the 15 day period for public review after publication of the Floodplain SOF. RI/FS intrusive site activities within the 300-FF-5 were scheduled to begin March 25, 1991, but have been delayed pending completion of NEPA documentation. To meet Tri-Party Agreement milestones and contractual agreements, it is necessary that RI/FS activities begin to the best of our abilities in accordance with the latest Tri-Party Agreement Schedules. In our opinion, Tri-Party Agreement requirements qualify as "emergency circumstances" and "overriding considerations of program or project expense or effectiveness" per 10 CFR 1022.18 (c).

ISTER, as soon as practicable after a determination that a floodplain/wetlands may be affected and at least 15 days prior to the issuance of a statement of findings with respect to a proposed floodplain action. DOE shall take appropriate steps to inform Federal, State, and local agencies and persons or groups known to be interested in or affected by the proposed floodplain/wetlands action. The Public Notice shall include a description of the proposed action and its location and may be incorporated with other notices issued with respect to the proposed action.

(c) Following publication of the Public Notice, DOE shall allow 15 days for public comment prior to making its decision on the proposed action, except as specified in § 1022.18(c). At the close of the public comment period, DOE shall reevaluate the practicability of alternatives to the proposed floodplain/wetlands action and the mitigating measures, taking into account all substantive comments received.

§ 1022.15 Notification of decision.

(a) If DOE finds that no practicable alternative to locating in the floodplain/wetlands is available, consistent with the policy set forth in E.O. 11988, DOE shall, prior to taking action, design or modify its action in order to minimize potential harm to or within the floodplain/wetlands.

(b) For actions which will be located in a floodplain, DOE shall publish a brief (not to exceed three pages) statement of findings which shall contain:

- (1) A brief description of the proposed action, including a location map;
- (2) An explanation indicating why the action is proposed to be located in the floodplain;
- (3) A list of alternatives considered;
- (4) A statement indicating whether the action conforms to applicable State or local floodplain protection standards; and
- (5) A brief description of steps to be taken to minimize potential harm to or within the floodplain.

For floodplain actions which require preparation of an EA or EIS, the statement of findings may be incorporated into the FONSI or final EIS, as

appropriate, or issued separately. Where no EA or EIS is required, DOE shall publish the statement of findings in the Federal Register and distribute copies to Federal, State, and local agencies and others who submitted comments as a result of the Public Notice. For floodplain actions subject to the Office of Management and Budget (OMB) Circular A-95, DOE shall send the statement of findings to the State and area-wide A-95 Clearinghouses for the geographic area affected.

§ 1022.16 Requests for authorizations or appropriations.

DOE shall indicate in any requests for new authorizations or appropriations transmitted to OMB, if a proposed action will be located in a floodplain or wetlands, whether the proposed action is in accord with the requirements of E.O. 11990 E.O. 11988, and these regulations.

§ 1022.17 Follow-up.

For those DOE actions taken in floodplain/wetlands, DOE shall verify that the implementation of the selected alternative, particularly with regard to any adopted mitigating measures, is proceeding as described in the floodplain/wetlands assessment and statement of findings.

§ 1022.18 Timing of floodplain/wetlands actions.

(a) Prior to implementing a proposed floodplain action, DOE shall endeavor to allow at least 15 days of public review after publication of the statement of findings.

(b) With respect to wetlands actions (not located in a floodplain), DOE shall take no action prior to 15 days after publication of the Public Notice in the Federal Register.

(c) Where emergency circumstances, statutory deadlines, of overriding considerations of program or project expense or effectiveness exist, the minimum time periods may be waived.